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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/669,171	09/23/2003	Brian Gonsalves	1033-SS00419	1698
34456	7590	06/28/2005	EXAMINER	
TOLER & LARSON & ABEL L.L.P. 5000 PLAZA ON THE LAKE STE 265 AUSTIN, TX 78746			HUYNH, BA	
			ART UNIT	PAPER NUMBER

2179

DATE MAILED: 06/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/669,171

Applicant(s)

GONSALVES ET AL.

Examiner

Ba Huynh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Specification

1. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: proper antecedent for the claim limitation “computer-readable medium” is not found in the specification.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claim 24 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The applicants fail to provide a detail description of how the “computer-readable data” stored in the “computer-readable medium”, without being executed by a computer, is capable of performing the functions “to receive a request for connection...”, “to determine an address...), etc. as recited in claim 24.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

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The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 24 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP § 2172.01. The omitted elements are: the necessary means for performing the functions “to receive a request for connection...”, “to determine an address...”, etc., as recited in the claims.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claim 24 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claim recites a “computer-readable medium” having a data structure readable by a computer (“computer-readable data”). As set forth in par 1 of this Office action, the specification neither provide antecedent basis nor clearly convey what the scope of the term “medium” is, the “medium” could be broadly interpreted as a piece of paper having a content therein (“computer-readable data”) to be scanned by a computer, i.e., printed material. Printed materials are subject of Copyright protection.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1, 2, 4-7, 9-11, 14-16, 22-24 are rejected under 35 U.S.C. 102(e) as being anticipated by US patent application publication 2003/0028890 (Swart et al).

- As for claim 1: Swart et al (herein Swart) teach a computer implemented method and corresponding apparatus of network services comprising a video content source operable to output an information stream in response to a delivery request (0043-0047) and further operable to discontinue output of the information stream in response to a cease request (0071), the video content source having a unique address (inherently include in the teaching of web site and online databases), an engine for maintaining a list of available content sources comprising video content sources (0045, 0048), an access engine operable to receive user input from a user device (0048), the user input includes the search results mapable to the unique address and indicating a desire for the video stream (0045, 0046), and service engine coupled to the access engine and operable to initiate establishment of at least a portion of a point-to-point communication link between the user device and the video source (0101), the network service engine further operable to initiate sending of the delivery request (0043-0047) and to track a metric associated with user access to the information system (0056).
- As for claim 2: An authentication engine communicatively coupled to the access unit and operable to consider an initial set of credential received from a user (0056, 0057),

the authentication engine operable to establish link to the network in response to the authorization of the initial set of credentials.

- As for claim 4: A format converter associated with the access engine, operable to translate the video stream into format playable by the user terminal (0053).
- As for claim 5: The service engine operable to facilitate point-to-point protocol over Ethernet communication link (0076, 0101).
- As for claim 6: The service engine operable to send the cease request (0071).
- As for claim 7: The system further includes a plurality of remotely located video content sources each having a unique address (0044, 0045, 0048).
- As for claim 9: The system further includes a device engine for determining the device used by the user and formatting the video content accordingly (0052).
- As for claim 10: The metric is selected from a group consisting of information throughput and connection duration (0020, 0056, 0059, 0109).
- As for claims 11, 16, 24: The system further comprises a billing engine to generate an invoice based on the metric (0059, 0072).
- As for claim 14: The system includes wireless communication (0091), point-to-point protocol over Ethernet (0076,0101), wherein the cable modem is employed as a node of the communication link (0076).
- As for claim 15: The list of video content available to the user is based on an editable user account information (0056).
- As for claim 23: It is implicitly included that the video content source toggle from not output to output state responsive to an accepted video transfer request.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 3, 8, 12, 13, 17-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Swart et al.

- As for claims 3, 18: A telephone interface associated with the access engine (0048). Swart fails to clearly teach the voice interface. However Official notice is taken that implementation of phone voice interface is well known and would have been obvious to one of skill in the art for communication with the service provider as a supplement input interface.
- As for claim 8: Per Swart, user may retrieve video contents related to TV series, documentaries, educational, juvenile, live event, geographical specific content, etc (0073). Implementation of child case facility and home surveillance video contents would have been obvious in light of Swart teaching above.
- As for claim 12: Per Swart, the system includes a billing engine to generate an invoice for billing the consumer (0059, 0072). Implementation of receiving method of payment from the consumer would have been obvious method of doing business.
- As for claim 13: Per Swart, the system comprises wireless communication (0091), point-to-point protocol over Ethernet (0076, 0101). Implementation of point-to-point

protocol over asynchronous transmission is well known and would have been obvious to one of skill in the art for transferring data intermittently instead of steady stream.

- As for claim 17: Swart fails to clearly teach notifying the consumer the cost of service and receiving payment prior to service. However official notice is taken that implementation of notifying the consumer the cost of service and receiving payment prior to service would have been an obvious method of doing business.
- As for claim 19: The system further includes a list of video content sources each having a unique address (0044, 0045, 0048). The service engine operable to facilitate point-to-point protocol over Ethernet communication link (0076, 0101). Notifying the consumer the cost of service and receiving payment prior to service would have been an obvious method of doing business.
- As for claim 20: The metric includes information throughput and connection duration (0020, 0056, 0059, 0109). Tracking quality of service and peak bandwidth would have been obvious method of doing business in video transmission.
- As for claim 21: Implementation of converting variable bit rate to constant bit rate stream would have been obvious for better video quality and bandwidth control.

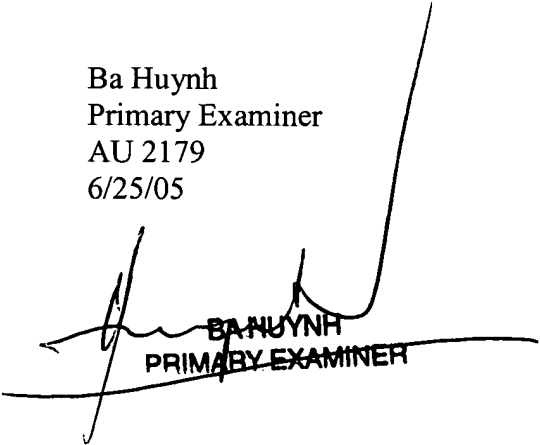
7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ba Huynh whose telephone number is (571) 272-4138. The examiner can normally be reached on Mon - Fri.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Herndon can be reached on (703) 308-5186. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ba Huynh
Primary Examiner
AU 2179
6/25/05


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PRIMARY EXAMINER